

FILED

JUN 16 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JORGE HUERTA-AVALOS,

Defendant - Appellant.

No. 05-50700

D.C. No. CR-04-02779-MLH

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
Marilyn L. Huff, District Judge, Presiding

Submitted June 12, 2006 ^{**}

Before: KLEINFELD, PAEZ, and BERZON, Circuit Judges.

Jorge Huerta-Avalos appeals his 57-month sentence imposed following his guilty plea to being found in the United States after illegal re-entry, in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we vacate and remand.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Huerta-Avalos contends that the district court violated his constitutional rights by imposing a sentence in excess of the two-year maximum set forth in 8 U.S.C. § 1326(a) based on a prior conviction that was neither proved to a jury nor admitted during the plea colloquy. This contention is foreclosed by *United States v. Weiland*, 420 F.3d 1062, 1079 & n.16 (9th Cir. 2005), *cert. denied*, 126 S. Ct. 1911 (2006).

Huerta-Avalos also contends that the district court's 57-month sentence was unreasonable. From the sentencing hearing record before us, we are unable to discern whether the district court understood the advisory nature of the United States Sentencing Guidelines, and whether the district court gave adequate consideration to the sentencing factors set forth in 18 U.S.C. § 3553(a). *See United States v. Mix*, No. 05-10088, 2006 WL 1549737, at *6 (9th Cir. June 8, 2006). We therefore cannot determine whether Huerta-Avalos' sentence was reasonable. *See id.* Accordingly, we vacate Huerta-Avalos' sentence and direct the district court to explicitly employ the section 3553(a) factors at resentencing.

VACATED and REMANDED.